IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/08/2002

CORAM

THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

C.R.P.No.3577 of 1997

Santhammal .. Petitioner

-Vs-

1. Kaliammal
2. Thirupathi
3. Senkottaian .. Respondents

Petition filed against the fair and final order dated 3.10.1997 made in E.A.No. 213 of 1992 in E.P.No.134 of 1991 in O.S.No.388 of 194 3 on the file of the District Munsif Court, Tiruchengode.

!For Petitioner : Mr. S.A. Hafiz

^For Respondents : Mr. V. Radhakrishnan

:ORDER

The above Civil Revision Petition is filed agaisnt the fair and final order dated 3.10.1997 made in E.A.No. 213 of 1992 in E.P.No.134 of 1991 in O.S.No.388 of 1943 on the file of the District Munsif Court, Tiruchengode.

2. The case of the petitioner in E.A. filed under Section 47 of C. P.C. is that originally the property under dispute and other properties belonged to Ramagoudner. Kaliammal, the wife of Ramagounder filed a suit in O.S.No. 388 of 1943 for maintenance for her and their daughter and obtained decree for the same with charge over the property in dispute on 14.2.1944. The first respondent, the wife claimed maintenance only upto 1948. Lateron she had given up her maintenance right and she had not executed the decree upto 1984 or atleast by 1986. The said Ramagounder died on 18.4.1990. After his death the wife filed another E.P.No.134/1991 against one Thirupathi the son of the Ramagoudner through another wife. In the said E.P, the third respondent purchased the property in court auction on 13.2.1992.
3. Ramagoudner during his life time borrowed amount in a pronote from one Rangaswami and the said Rangasswami obtained a money decree in O.S.No. 346 of 1972. Ramagoudner also mortgaged the property and other properties for himself and as guardian and father of his minor sons. The property was sold in R.E.P.No. 254 of 1979 and one C.P. Duraiswami was the successful auction

purchaser of the property. A sale certificate was issued in favour of the said Duraiswami on 6.5.1983 and delivery was also effected in favour of the said Duraiswami on 14.7.1983. Thereafter the petitioner purchased the property from the said Duraiswami under sale deed dated 9.5.1984 . From the date of purchase, the petitioner is in possession and enjoyment as her own right.

4. It is the further case of the petitioner that the first respondent and second respondent colluded together and filed R.E.P. No.134 of 1991 and brought the properties for sale in a fraudulent manner . In the suit filed for maintenance in O.S.No.388 of 1943, a maintenance decree was granted and the charge over the property was created by decree dated 14.2.1944. However, R.E.P 134 of 1991 was filed against Tiruppathi, the son through the second wife. In that E.P. the 3rd respondent purchased the property .

5. This application was resisted by filing counter questioning the maintainability of the petition under Section 47 of the Civil Procedure Code.

6. The executing court after taking into consideration of the materials made available before it and arguments advanced on behalf of the counsel on either side non-suited the petitioner for the relief as sought for in the petition. The correctness of the said order is now put in issue in the Civil Revision Petition.

7. Mr. S.A.Hafiz, learned counsel appearing for the petitioner submitted that the order of the executing Court is not in conformity with the provisions of the Civil Procedure Code in particular to Section 47. It is not in dispute that the property was sold in courtaction in respect of the money decree in O.S.No.346 of 1972 and the vendor of the petitioner has purchased the property in court action and from him, the petitioner has purchased the property. Section 47 of the Civil Procedure Code empowers the executing court to decide all questions arising between the parties to the suit in which the decree was passed "or their representatives" relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. The wordings employed in Section 47 "or their representative" which included the petitioner also in the sense that he being purchaser of the subject property from the court auction purchaser Duraisami in E.P.No.254 of 1979 in O.S.No. 346 of 1972 the petitioner can maintain an application under Section 47 of C.P.C. The word "or their representatives" employed in Section 47 encompasses the petitioner also and as such the petitioner can very well maintain an application under Section 47 of the Civil Procedure Code.

8. He further contended that this application could be maintained under Order 21 Rule 58 , which provided for adjudication of claim or objections in the sense where any claim is preferred to or any objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions contained .

9. On the other hand, this contention was refuted by Mr. Radhakrishnan, learned counsel appearing for the respondent that Rule 58 of Order 21 is in no way applicable to the facts to the present case. Even assuming so, that is is applicable what the rule provides for is that the

Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions contained therein.

10. As a matter of fact, the executing court has adjudicated upon the claim made by the petitioner and rendered a finding that the petitioner is not a representative as contemplated under Section 47 of the Civil Procedure Code. He further contended that the issue is no more res integra. The point in issue is exactly covered by the judgement in MOHAN VS. VARALAKSHMI AMMAL (1990 (2) MLJ 552) and further the full Bench of this Court consisting of five Hon'ble Judges in ANNAMALAI MUDALI VS. RAMASAMI MUDALI (AIR 1947 Madras 161) has taken the very same stand in the earlier case.

11. Though the contentions raised by the learned counsel for the petitioner that the vendor of the petitioner, who purchased the property in court auction could be considered as a representative of the judgment debtor of the money decree is somewhat appealing, but the same has to be rejected, if we considered the provisions of Section 47 of the Civil Procedure Code in its proper perspective. Under Section 47 of the C.P.C it is provided that all questions arising between the parties to the suit in which the decree was passed or their representatives relating to the execution , discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. It further provides that where a question arises as to whether any person is or is not the representative of a party such question shall for the purposes of this section, be determined by the Court. Explanation II(a) to Section 47, C.P.C stated that for purposes of Section 47, C.P.C , a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed. It is in the background of the aforesaid provisions, the maintainability of the application filed by the petitioner under Section 47 C.P.C. has to be considered. In the suit in O.S.No. 388 of 1943, the petitioner was not a party. The contention of the learned counsel for the petitioner is that the petitioner should be deemed to be a party in O.S.No. 388 of 1943, as he had purchased the property from the court auction purchaser in execution of the decree in O.S.No. 346 of 1972. As already stated the petitioner or his vendor the court auction purchaser in O.S.No. 346 of 1972 was not a party in O.S.No. 388 of 1943. Under Explanation II(a) to Section 47, a legal fiction is created in which the purchaser of the property in a court auction sale is regarded as a party to the suit in which the decree is passed. It is seen from the explanation, the purchaser of the property at court auction in execution of a decree by a fiction is deemed to be a party to the suit in which the decree is passed. Obviously therefore, the passing of the decree in the suit and the execution of the decree so passed have reference to the same suit and not the different suit.

12. The question of the petitioner being a representative under Section 47(1) has to be looked at from the view of the devolution of the interest of either the plaintiff or the defendant in O.S.No. 388 of 1943. Admittedly, the plaintiff in O.S.No. 388 of 1943 had not parted with any rights or interests in favour of the petitioner or his vendor. Likewise neither the petitioner nor his vendor can claim to be a representative of Ramagounder, the defendant in O.S.No.388 of 19 43 against whom a charge decree was granted by reason of the court auction purchase in execution of a decree in O.S.No. 346 of 1972. As per Section 47(1)C.P.C in order to enable an application to be maintained and enquired into, a question should arise

between the parties to the suit, in which the decree was passed for their representatives. The petitioner cannot be regarded as a representative of Ramagounder, the defendant in O.S.No. 388 of 1943 for he had not acquired any interest of Ramagounder either from him or by a court auction sale in execution of the decree against him in O.S.No. 388 of 1943. Inasmuch as the petitioner has not acquired any right or interest from Ramagoudner, the defendant in O.S.No. 388 of 1943, the petitioner cannot be regarded as a representative of Ramagoudner so as to enable him to maintain an application under Section 47. For the above said reasoning I can draw the support of the decision in MOHAN vs. VARALAKSHMI AMMAL (1990 (2) MLJ 552) in which the facts are almost identical and the issue as to whether the court auction purchaser in a money decree can maintain an application under Section 47 of the Civil Procedure Code in an execution proceedings on the earlier maintenance decree has been considered and ultimately it has been held that the court auction purchaser in a money decree cannot maintain a petition under Section 47 of the Civil Procedure Code in an execution proceedings in the maintenance decree and he cannot also be considered as a representative within the meaning of Section 47(1) of the Civil Procedure Code. The very same position has been found favour by the Full Bench of this Court consisting of five Hon'ble Judges in ANNAMALAI MUDALI VS. RAMASAMI MUDALI AND OTHERS (AIR 1941 Madras 161).

13. In view of the foregoing reasons the Civil Revision Petition deserves to be dismissed. Accordingly it is dismissed. However, there will be no orders as to costs.

14. It is made clear that the dismissal of the present revision petition would not in any way preclude the petitioner to invoke any other legal right available to him so as to safeguard his interest.

19.8.2002
Index:Yes
Webiste:Yes
krr
To
1. The District Munsif,
Tiruchengode.
2. The Record Keeper
VR Section, High Court, Madras.

K.RAVIRAJA PANDIAN,J.

□